IN THE MATTER OF ARBITRATION BETWEEN

Minnesota Public Employees Association,

Union,

and

INTEREST ARBITRATION DECISION

City of Hutchinson,

Employer.

BMS Case No. 15-PN-0566

Arbitrator:	Stephen F. Befort
Hearing Date:	February 2, 2016
Record Closed:	February 9, 2016
Post-hearing Briefs submitted:	February 23, 2016
Date of Decision:	March 23, 2016

Appearances:

For the City:	Susan K. Hansen
For the Union:	Robert J. Fowler

INTRODUCTION

This is an interest arbitration proceeding arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01 - 179A.30. Minnesota Public Employees Association ("Union") is the exclusive representative of a unit of essential public safety employees employed by the City of Hutchinson ("Employer" or "City"). The unit consists of fourteen police officers. None of the other 160 City employees are represented by a union.

The parties previously negotiated a first collective bargaining agreement ("CBA") for 2013-2014. The Union and the City have engaged in negotiations for a successor agreement,

but they have been unable to reach an agreement. The Bureau of Mediation Services ("BMS") certified eight issues for interest arbitration. The parties have resolved three of those isues, leaving five issues for interest arbitration.

DISCUSSION AND AWARD

INTEREST ARBITRATION STANDARDS

1. **Replicate Voluntary Agreement**. The central goal of interest arbitration is to ascertain the agreement that the parties themselves would have reached if they had continued bargaining and concluded a voluntarily negotiated settlement. *See* AFSCME Council 65 and County of Carver, BMS Case No. 10-PN-423 (Fogelberg, 2011).

2. **Criteria for Determination**. In general, arbitrators consider the following factors in determining interest arbitration awards: the employer's ability to pay and other economic considerations, relevant internal comparisons, and relevant external comparisons. Since the adoption of the Minnesota Pay Equity Act, Minn. Stat. Sec. 471.991 - 471.999, the principal, but not exclusive, factor relied upon by most Minnesota interest arbitrators in deciding issues of wages, benefits, and other terms and conditions of employment has been internal consistency with the settlements negotiated with respect to the other bargaining units in the same jurisdiction. *See* e.g., Law Enforcement Labor Services, Inc. and McLeod County, BMS Case No. 03-PN-613 (Kircher, 2003); Law Enforcement Labor Services, Inc. and Chisago County, BMS Case No. 95-PN-54 (Berquist, 1995).

3. **Burden on Proponent for Change**. As a general proposition, an interest arbitrator should not alter longstanding contractual arrangements in the absence of a compelling reason to do so. Accordingly, most interest arbitrators will place the burden on the party proposing a change in the parties' relationship to demonstrate the need for such change by clear and

compelling evidence. *See* Human Services Supervisors Association and County of Dakota, BMS Case No. 97-PN-837 (Wallin, 1997).

ISSUES FOR RESOLUTION

Wages (2015 and 2016)

A. Final Positions

i. Union

- 3% increase in the pay grid for each year of the contract.
- No general wage adjustment for either year.
- Eligibility for annual merit pay increase (0 to 7%).

ii. City

- 2% increase in the pay grid for each year of the contract.
- No general wage adjustment for either year.
- Eligibility for annual merit pay increase (0 to 7%).

B. Discussion

Union Arguments

The Union initially points out that the City acknowledged at the arbitration hearing that it had the ability to fund the Union's wage position. The CPI and other cost of living indices generally show an approximate 2% upward adjustment for each year of the contract period.

The Union asserts that no internal wage pattern exists in this matter. The Union argues that an internal wage pattern can only be established by bargained-for agreements entered into by represented employee groups. In this instance, however, the Union is the only organized group of City employees. The fact that the City establishes wage adjustments for all other employees through a uniformly administered compensation plan, the Union argues, cannot establish an

internal pattern because such would essentially replace the parties' duty to bargain. Accordingly, the Union contends that external comparisons should be controlling.

The Union urges a comparison group that consists of the State of Minnesota's Department of Employment and Economic Development's "Micro Statistical Areas." These areas consist of non-metropolitan geographical areas with a significantly-sized regional city anchor. The Union proposes that the 15 city anchors of these regions provide the best comparison group as they are comparable in terms of population, tax capacity, and revenue stream. The Union argues that this comparison group is superior to that asserted by the City which includes counties as well as cities. The Union also asserts that the parties have not bargained for or agreed to the City's proposed comparison group.

Using the Union's comparison group, the data show that the City's wage proposal would be below the comparison group average at the minimum point of the pay grid, but above the comparison average at the maximum point of the pay grid. The Union's data indicates that the average comparison group adjustment is 2.27% for 2015, and 2.32% for 2016.

City Arguments

As noted above, the City is not arguing that it is unable to fund the Union's wage proposal. The City contends that the Wage Committee that recommends to the City Council market adjustments to the pay grid reviewed various cost-of-living indicia and those indicia show an upward annual movement of less than two percent.

The City strongly argues in favor of internal consistency in setting wages. The City points out most Minnesota arbitrators in recent years have found internal consistency to be the most significant factor in making interest arbitration wage awards. The City contends that this emphasis on the internal pattern should apply even if the jurisdiction in question has no other

organized units, and cites to two awards that have so expressly held. *See* AFSCME Council 65 and Pioneerland Regional Library System, BMS Case No. 14-PN-0356 (Jacobs, 2014); Lyon County and Law Enforcement Labor Services, Inc., BMS Case No. 04-PN-1055 (Miller, 2005).

In this instance, the City's position for 2015 and 2016 is the same as the compensation plan in place for the other 160 City employees who are non-union. In the 2013-14 collective bargaining agreement, the parties voluntarily agreed to the same wage adjustment as that provided to the City's other employees, which the City cites as evidence of what a voluntary settlement for 2015-16 likely would have produced. The City maintains that a unified, City-wide compensation plan is essential for labor stability and basic fairness, and that a higher award for the unit employees will provide little incentive for future voluntary bargaining.

In terms of external comparisons, the City argues in favor of a "historical comparison group" that consists of a number of neighboring counties and cities. The City claims that it has used this comparison group in the past in determining adjustments to the pay grid, and that it shared this comparison group with the Union during negotiations without receiving an objection. The City also contends that a number of cities in the Union's proposed comparison group are much larger that Hutchinson. In any event, the City argues that an arbitrator should not accept a new proposed comparison group that has not been agreed upon through collective bargaining.

Like the Union's comparison group, the City's comparison group similarly shows that the City's wage proposal would be below the comparison group average at the minimum point of the pay grid, but above the comparison average at the maximum point of the pay grid. The City maintains that the Union's wage proposal would cost $12,423 more than the City's position over the two year term.

C. Analysis

Most Minnesota interest arbitrators give primary weight to internal comparisons in awarding wages. I generally have adhered to this view. But, that weight is lessened in this instance because Hutchinson has no other organized units to provide a comparison with respect to bargained-for outcomes. Internal consistency still deserves some weight in this context because of concerns about fairness and morale. But to give principal weight to a public employer's unilateral wage determination diminishes the obligation of both parties to bargain in good faith.

In this case, internal comparisons favor the City's position since all of the other 160 City employees will receive a two percent pay grid adjustment for both 2015 and 2016. Determining the impact of external comparisons is more difficult. One problem is that the parties disagree on the appropriate set of comparison jurisdictions. The City contends that it has used a historical comparison group that largely consists of neighboring cities and counties and that the burden should be on the Union to show why the continued use of that group is inappropriate. The Union argues that counties are not a proper comparison for cities and that a presumption in favor of the City's proposed comparison group is unwarranted since the parties bargaining relationship is relatively new and they have never agreed on an appropriate comparison group.

I have two responses to this disagreement. First, the parties did not present me with sufficient evidence to make a reasoned determination as to the appropriate comparison group. Instead, the parties should have an opportunity to engage in the give and take of bargaining over this topic in the future. Second, the disagreement over the proper comparison group makes little substantive difference in this proceeding. Both comparisons show that unit employees are paid

below the comparative average at the minimum of the pay grid, but above average at the maximum of the pay grid.

One piece of evidence that I did find to be influential is data submitted by the Union indicating that the average comparison group wage adjustment is 2.27% for 2015, and 2.32% for 2016. Since the weight given to internal comparisons is lessened in this case, the impact of this external comparison is relatively stronger. A similar outcome is warranted for this unit.

D. Award: A 2.25% increase in the pay grid for 2015 and a 2.25 % wage increase for 2016.

Shift Differential

A. Final Positions

i. Union

- Add the following language to the end of Article 19:

  Each employee shall receive a $0.50 per hour night shift differential added to base wag for each hour worked between 9pm and 7am. Any hours the employee is held over shall also be added to shift differential.

ii. City

- No change to existing language.

B. Discussion

Union Arguments

The Union seeks language that would provide for $ .50 per hour shift differential pay for time worked from 9:00 pm to 7:00 am. In Blue Earth County and Minnesota Public Employees Association, BMS Case No. 14-PN-0203 (Miller, 2014), Arbitrator Richard Miller relied upon external comparisons in awarding shift differential pay for a unit of employees who previously had not received such pay. The Union contends that only four of the fifteen Micro Statistical

Area comparables do not have some type of shift differential. The average shift differential pay among that group is $ .64/hour.

City Arguments

The City asserts that since Hutchinson police officers have never previously received shift differential pay, the burden is on the Union to show a compelling reason for adding such a new benefit to the parties' contract. While Arbitrator Miller awarded shift differential pay in the Blue Earth case, he more recently denied a new shift differential benefit in a case in which only one-half of the appropriate comparison group jurisdictions provided such a benefit. Nobles County and Teamsters Local No. 320, BMS Case No. 15-PN-0458 (Miller, 2016). The City claims that only five of the thirteen comparison jurisdictions in its proposed comparison group provide shift differential pay.

C. Analysis

Since the Union is seeking a benefit not previously provided, the Union bears the burden of showing that such benefit is supported by changed circumstances or compelling need. The Union has not carried that burden in this instance.

D. Award: The City's position is awarded.

Overtime

A. Final Positions

i. Union

- Delete last sentence of Article 11.3 and insert the following language: "All hours in compensated status count as hours worked for computation of overtime."

ii. City

- No change.

B. Discussion

Union Arguments

The City has a policy that mandates police presence, primarily on weekends, at two event centers that are predominantly used for weddings. Although the City seeks volunteers for these events, the department assigns officers if there is a lack of volunteers, which results in forced overtime. Under the 2013-14 collective bargaining agreement, an officer who takes vacation or compensatory time during a pay period and is then assigned to work a wedding will not be paid overtime for the extra hours worked. The Union claims that this has been an increasing problem and seeks contract language that counts all compensated hours, including vacation and comp time, when computing overtime. The Union contends that all but one of the cities in its comparable group count all compensated hours in calculating overtime.

City Arguments

The City maintains that the definition of "hours worked" for purposes of computing overtime has long included only actual time worked, thereby excluding vacation time and compensatory time. The City argues that the Union must show a compelling need to change the status quo and that no such reason exists in this context.

C. Analysis

Since the Union is seeking a benefit not previously provided, the Union bears the burden of showing that such benefit is supported by changed circumstances or compelling need. The Union has not carried that burden in this instance.

D. Award: The City's position is awarded.

Wages, eligibility for increases

A. Final Positions

i. Union

- Add the following language to the end of Article 19:

  all employees to be eligible for all increases regardless of whether discipline has been imposed.

ii. City

- No change to existing language.

B. Discussion and Analysis

Current City policy provides that the City may withhold pay increases for an employee who is subject to discipline. The Union seeks to add language to Article 19 that would remove that authority, arguing that such a policy could be applied unfairly. The City argues that this language is not necessary since there is no history of anyone losing a pay increase because of discipline. The Union's response is that the proposed language would codify and clarify existing practice and remove the possibility of a future change in practice. I find the Union's logic to be persuasive.

C. Award: The Union's position is awarded.

Dated: March 23, 2016

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Stephen F. Befort
Arbitrator